



June 20, 2002

Mr. Gordon Bowman  
Assistant County Attorney  
Travis County  
P.O. Box 1748  
Austin, Texas 78767

OR2002-3356

Dear Mr. Bowman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164598.

The Travis County Sheriff's Office (the "sheriff") received a request for five incident reports relating to a specified address. You state that the sheriff has released report number 01-9841. The sheriff claims that report number 01-9839 is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the sheriff has not submitted report nos. 00-26062, 00-26079, and 01-31549 in requesting this decision. Therefore, the sheriff must release those reports, to the extent that they exist, unless she has already done so. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). Chapter 552 of the Government Code does not require the sheriff to release information that did not exist when her office received this request or to create responsive information. *See* Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

We next note that the information in the narrative supplement to report number 01-9839, which the sheriff seeks to withhold, is almost identical to the information in the narrative supplement to report number 01-9841, which the sheriff has released to the requestor. If a governmental body has voluntarily released information to a member of the public, it may not withhold that same information from further public disclosure, unless release of the information is expressly prohibited by law or the information is made confidential by law. *See* Gov't Code § 552.007; Open Records Decision Nos. 518 at 3 (1989), 400 at 2 (1983). Section 552.108 of the Government Code, which the sheriff raises, does not prohibit the release of information or make information confidential. *See* Open Records Decision

No. 177 at 3 (1977) (governmental body may waive law enforcement exception). Thus, to the extent that the narrative supplements to report numbers 01-9839 and 01-9841 contain the same information, the sheriff has waived her claim with regard to this information under section 552.108.

However, we must address the sheriff's claim that report number 01-9839 constitutes confidential criminal history information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile information that depicts a particular individual as a criminal suspect, arrestee, or defendant, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); see also Open Records Decision No. 616 at 2-3 (1993). This request is for information that relates to a specified address, rather than to any particular individual. Therefore, the information in report number 01-9839 is not private under section 552.101 in conjunction with *Reporters Committee*.

Common-law privacy also encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. See 540 S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. See Open Records Decision No. 659 at 4-5 (1999). The sheriff claims that references to a domestic incident are protected by common-law privacy. We conclude, however, that the sheriff has not demonstrated that any of this information is confidential under section 552.101. See Open Records Decision No. 611 at 1 (1992) (assault by one family member on another is a crime, not a family matter normally considered private). Therefore, to the extent that the narrative supplements to report numbers 01-9839 and 01-9841 contain the same information, the information in report number 01-9839 must be released. We have marked that information accordingly.

Next, we address the sheriff's claim under section 552.108 with regard to the rest of report number 01-9839. Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 applies to the information. See *id.* § 552.301(e)(1)(A);

*Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). The sheriff states that report number 01-9839 relates to a pending prosecution for assault. Based on this representation, we find that the sheriff has demonstrated that section 552.108(a)(1) is applicable to the remaining information in that report. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The sheriff must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). The sheriff may withhold the remaining information in report number 01-9839 under section 552.108(a)(1) of the Government Code.

In summary, the sheriff must release the information in the narrative supplement to report number 01-9839 that is the same as in report number 01-9841. The sheriff may withhold the remaining information in report number 01-9839 under section 552.108(a)(1), but must release basic information under section 552.108(c). As we are able to make these determinations, we need not address section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

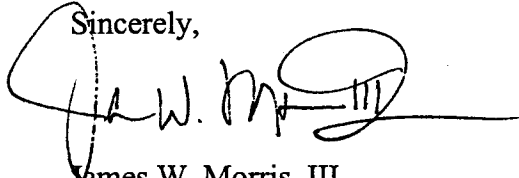
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 164598

Enc: Submitted documents

c: Ms. Susan E. Mitchell  
6607 Brodie Lane, Apt. 1028  
Austin, Texas 78745  
(w/o enclosures)